

Legal representation and self-represented litigants

Where a party is self-represented in domestic and family violence related proceedings, there may be adverse consequences to both parties and more generally to the administration of justice.

Bench books, best practice guidelines and other resources have been developed in a number of Australian jurisdictions to assist judicial officers in ensuring that self-represented parties are afforded procedural fairness and access to justice while maintaining their independence and neutrality (see Judicial Action guide [[Self-Represented Litigants - Judicial Actions](#)]).

Where a party who is a victim of domestic and family violence is self-represented and required to cross-examine the perpetrator, their capacity to appropriately and fully question may be diminished or negated by their fear of the perpetrator [[Coy et al 2012](#)]. Where the perpetrator is represented, a self-represented victim may feel particular pressure to withdraw or not proceed with an application [[Qld Special DFV Taskforce 2015](#)], or to consent to orders or undertakings as a result of fear or intimidation, or to avoid being compromised or intimidated by a hearing or other ongoing proceedings [[Kaspiew et al 2009](#)].

A perpetrator may choose to be self-represented so as to secure the opportunity to directly cross-examine the victim. **The victim's capacity to give evidence or the quality of the victim's evidence in these circumstances may be compromised by the victim's fear of the perpetrator** and, as a consequence, the probative value of the evidence may be diminished or negated. Importantly, there are some jurisdictions where in certain circumstances direct cross-examination of the victim by the perpetrator is prohibited or limited – see [7.2.1 table](#) and [9.2.3 table](#) for legislation references and summaries of the restrictions on direct cross-examination.

Where a perpetrator uses their own or the victim's self-represented status to subject the victim to further abuse through judicial processes, the victim may experience a form of **secondary abuse**.

Not only does the absence of legal representation potentially prejudice the self-represented party and limit their access to justice, it may also jeopardise the ability of the court to receive the necessary evidence and to make decisions for the safety and protection of victims and children [[Chisholm 2009](#)].

Research has shown the value to the court and parties of self-represented parties receiving advice and information on appropriate conduct and language in the courtroom prior to any court appearance or hearing [[Central Coast CLC 2014](#)]. Legal assistance providers deliver duty lawyer services to self-represented litigants in many courts, including providing legal advice and information about court processes, help with the preparation of documents, and in some cases, representation.

Australian studies reveal that many victims, mostly women, appear in protection order application proceedings without legal representation; this may be due to lack of access to legal assistance or the cost of engaging private lawyers [George & Harris 2014]. A party may not qualify for legal assistance if they own property, notwithstanding earning a low income [Braaf & Meyering 2011].

The problem of lack of private legal representation may be exacerbated in **regional and rural communities** where there may be fewer lawyers available, and the perpetrator may be given priority based on their standing in the community, their prior dealings or relationship with lawyers, or their financial resources [Kyle et al 2014]. Further in this context, where the perpetrator is aware that the victim may be in a financial position to engage legal representation, the perpetrator may use a tactic known as ‘conflicting out’, which involves seeking preliminary advice from multiple lawyers in the geographical area so as to **deny the victim access to legal representation** on the basis of conflict of interest.

Aboriginal and Torres Strait Islander people [JCCD, The Path to Justice (ATSI) 2016] and **people from culturally and linguistically diverse backgrounds** [FCA & FCCA 2013-15] may also be less likely to be legally represented or to seek representation due to language barriers, limited knowledge of their legal rights, and a lack of trust in judicial processes [Cleak et al 2015].

The approach to the protection of adult victims of domestic and family violence and sexual assault complainants / witnesses (sometimes called vulnerable or special witnesses) in domestic violence protection order matters and criminal cases varies throughout Australia. Protections may include closed courtrooms, using closed circuit television rather than being in court, using a screen in court, having evidence recorded so the person is only cross-examined once, allowing the presence of a support person and disallowing direct cross-examination of one party by another in certain proceedings. See **9.2.3 Vulnerable or Special Witnesses** for a table outlining jurisdictional approaches.

Note that detailed information about children giving evidence in criminal proceedings can be found here: [Bench Book For Children Giving Evidence In Australian Courts](#)

Important note: The expression “self-represented” is used in this bench book to refer to any situation where a party is not represented by a lawyer. It is acknowledged that the expression may be inappropriate in some contexts. It may, for example, suggest that a party has exercised a choice to represent themselves, when in fact they do so due to lack of financial resources or access to legal assistance. On the other hand, some parties choose to represent themselves because they believe they are best equipped to do so and may object to the use of an expression such as “unrepresented” on the basis that it may, for example, be interpreted to suggest that they are unable to properly or fully participate in the proceedings in their own right.